

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

TRACEY MARTINEZ,

Plaintiff,

vs.

KOHL'S CORPORATION,

Defendant

Case No.: 1:19-cv-00484

**COMPLAINT AND JURY
DEMAND**

COMPLAINT

Plaintiff, TRACEY MARTINEZ ("Plaintiff"), by and through her undersigned counsel, hereby sues Defendant, KOHL'S CORPORATION ("Defendant"), alleging as follows:

I. INTRODUCTION

1. Plaintiff brings this action on behalf of herself individually seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant, in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff's cellular telephone in violation of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*, and for Defendant's unlawful conduct in violation of the Texas Debt Collection Act ("TDCA"), Tex. Fin. Code Ann. §§ 392 *et seq.*

2. The TCPA was legislated to prevent companies like KOHL'S

1 CORPORATION from invading Americans' privacy by stopping abusive "robo-
2 calls." The legislative history "described these calls as 'the scourge of modern
3 civilization, they wake us up in the morning; they interrupt our dinner at night; they
4 force the sick and elderly out of bed; they hound us until we want to rip the telephone
5 out of the wall.' 137 Cong. Rec. 30, 821 (1991). Senator Hollings presumably
6 intended to give telephone subscribers another option: telling the autodialers to
7 simply stop calling." Osorio v. State Farm Bank, F.S.B., 746 F.3d 1242, 1255-56
8 (11th Cir. 2014).

12 II. JURISDICTION AND VENUE

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14 3. Jurisdiction of this Court arises under 28 U.S.C. §1331 and 47 U.S.C. §
15 227(b)(3). See Mims v. Arrow Financial Services, LLC, 565 U.S. 368 (2012)
16 holding that federal and state courts have concurrent jurisdiction over private suits
17 arising under the TCPA.

18
19 4. Venue is proper in the United States District Court for the Western District
20 of Texas pursuant to 28 U.S.C § 1391(b)(2) because Plaintiff resides within this
21 District and a substantial part of the events or omissions giving rise to the herein
22 claims occurred within this District.

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25 5. The violations described in this Complaint occurred in Texas.

26 III. PARTIES

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28 6. Plaintiff is a natural person residing in Guadalupe County, in the city of

1 Marion, Texas, and is otherwise *sui juris*.

2 7. Defendant is a nationally chartered bank, doing business in the state of
3 Texas, with its principal place of business located in Menomonee Falls, Wisconsin.
4 Defendant is a “person” as defined by 47 U.S.C. §153 (39).
5

6 8. At all times relevant to this Complaint, Defendant has acted through its
7 agents, employees, officers, members, directors, heir, successors, assigns,
8 principals, trustees, sureties, subrogees, representatives and insurers.
9

10 **IV. FACTUAL ALLEGATIONS**

11 9. Defendant placed collection calls to Plaintiff seeking and attempting to
12 collect on alleged debts incurred through purchases made on credit issued by
13 Defendant.
14

15 10. Plaintiff is the “called party.” See Breslow v. Wells Fargo Bank, N.A., 755
16 F.3d 1265 (11th Cir. 2014).
17

18 11. Defendant placed collection calls to Plaintiff’s cellular telephone at phone
19 number (210) XXX-0724.
20

21 12. Defendant placed collection calls to Plaintiff from various telephone
22 numbers including, but not limited to, (262) 704-8208, (262) 704-9378, (210) 944-
23 1998, (210) 640-3049 and (210) 640-3047.
24
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1 13. Upon information and belief, based on the number, frequency and timing of
2 the calls, and on Defendant's prior business practices, Defendant's calls were placed
3 with an automatic telephone dialing system.
4

5 14. Defendant used an "automatic telephone dialing system," as defined by 47
6 U.S.C. § 227(a)(1), to place telephone calls to Plaintiff seeking to collect a consumer
7 debt allegedly owed by Plaintiff.
8

9 15. Defendant's calls were not for emergency purposes, which would be
10 excepted by 47 U.S.C. § 227(b)(1)(A).
11

12 16. Defendant's calls were placed to a telephone number assigned to a cellular
13 telephone service for which Plaintiff incurs a charge for incoming calls pursuant to
14 47 U.S.C. §227(b)(1).
15

16 17. Defendant never received Plaintiff's "prior express consent" to receive calls
17 using an automatic telephone dialing system or an artificial or prerecorded voice on
18 her cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).
19

20 18. On or about November 9, 2018, Plaintiff spoke with a representative of
21 Defendant's company at phone number (262) 704-8208, and told Defendant to stop
22 calling her cellular telephone.
23

24 19. During the November 9, 2018 conversation, Plaintiff gave Defendant
25 representative ("Amber") her full name, in order to assist Defendant representative
26
27
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1 in identifying her and accessing her accounts before asking Defendant to stop
2 calling her cellular telephone.
3

4 20. Plaintiff revoked any consent, explicit, implied, or otherwise, to call her
5 cellular telephone and/or to receive Defendant's calls using an automatic telephone
6 dialing system in her conversation with Defendant's representative on November 9,
7 2018.
8

9 21. Despite Plaintiff's request to cease, Defendant continued to place calls to
10 Plaintiff's cellular phone after November 9, 2018.
11

12 22. Despite Plaintiff's request that Defendant cease placing automated collection
13 calls to Plaintiff via the use of an automatic telephone dialing system, Defendant
14 continued to place at least thirty-six (36) telephone calls via the use of an automatic
15 telephone dialing system to Plaintiff's cellular telephone.
16
17

18 23. Defendant placed the great number of telephone calls to Plaintiff with the
19 sole intention of harassing Plaintiff in such a manner so as to cause Plaintiff to pay
20 the alleged debt claimed by Defendant, even when Plaintiff admittedly had impaired
21 ability to pay. This telephonic harassment caused Plaintiff considerable anxiety and
22 emotional distress.
23
24

25 **FIRST CAUSE OF ACTION**
26 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**
27 **PROTECTION ACT - 47 U.S.C. §227(b)(3)(B)**
28

1 24. Plaintiff repeats and incorporates by reference into this cause of action the
2 allegations set forth above at Paragraphs 1-23.
3

4 25. The foregoing acts and omissions of Defendant constitute numerous and
5 multiple negligent violations of the TCPA, including but not limited to each and
6 every one of the above cited provisions of 47 U.S.C. § 227 *et seq.*
7

8 26. As a result of Defendant's negligent violations of 47 U.S.C. §227 *et seq.*,
9 Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and every
10 violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
11

12 27. Plaintiff is also entitled to injunctive relief prohibiting such conduct in the
13 future.
14

15 WHEREFORE, Plaintiff, TRACEY MARTINEZ, respectfully requests
16 judgment be entered against Defendant, KOHL'S CORPORATION, as follows:
17

18 a. Awarding Plaintiff statutory damages of five hundred dollars (\$500.00)
19 multiplied by the number of negligent violations of the TCPA alleged herein, to wit:
20 thirty-six (36) for a total of eighteen thousand dollars (\$18,000.00);
21

22 b. Awarding Plaintiff actual damages and compensatory damages
23 according to proof at time of trial;
24

25 c. Granting Plaintiff such other and further relief as may be just and
26 proper.
27

28 **SECOND CAUSE OF ACTION**

COMPLAINT AND JURY DEMAND

KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE
CONSUMER PROTECTION ACT
47 U.S.C. § 227(b)(3)(C)

28. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-23.

29. The above listed acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 *et seq.*

30. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*, Plaintiff is entitled an award of one thousand five hundred dollars (\$1,500.00) in statutory damages for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

31. Plaintiff is also entitled to injunctive relief prohibiting such conduct in the future.

WHEREFORE, Plaintiff, TRACEY MARTINEZ, respectfully requests judgment be entered against Defendant, KOHL'S CORPORATION, as follows:

a. Awarding Plaintiff statutory damages statutory damages of one thousand five hundred dollars (\$1,500.00) multiplied by the number of knowing and/or willful violations of TCPA alleged herein, to wit: thirty-six (36) for a total of fifty-four thousand dollars (\$54,000.00);

b. Awarding Plaintiff actual damages and compensatory damages

1 according to proof at time of trial;

2 c. Granting Plaintiff such other and further relief as may be just and
3 proper.
4

5 **JURY TRIAL DEMAND**

6 Plaintiff demands a jury trial on all issues so triable.
7

8
9 Dated: May 2, 2019

10 RESPECTFULLY SUBMITTED,

11
12 By: /s/Dorothy Butler Lawrence

13 Dorothy Butler Lawrence

14 28515 Ranch Road 12;

15 Dripping Springs, TX 78620

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